

STATE OF CALIFORNIA
ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION

In the Matter of:)	Docket No. 99-AFC-4
)	
Application For Certification of the)	STAFF'S RESPONSIVE
MOSS LANDING POWER PLANT)	BRIEF
)	SITE ANALYSIS
_____)	

On July 17, 2000, the Committee ordered that responsive briefs are due on or before July 21, 2000. Parties received permission to file these briefs on Monday, July 24, 2000. Staff herein responds to Applicant's Post Hearing Brief and other matters recently raised in public and other agency comments.

With respect to the Applicant's Post Hearing Brief, Staff has the following comments. For those areas not addressed by Staff, Staff agrees with the language proposed by Applicant.

Facility Design: Adding fuel gas compressors to the Major Equipment List is acceptable, as is changing the site lighting voltage description to "220 or 120" volts. As for deleting the Aqueous Ammonia Storage Tank, the Desalination Evaporator and the Oily Water Separator from the Major Equipment List, Staff does not understand the motivation for this proposed change. Staff believes that the above equipment should remain on the Major Equipment List.

Air Quality: With respect to Condition AQ-54, Staff disagrees with Applicant's position and recommends that the Committee retain that condition requiring the use of oxidizing soot filters on construction equipment.

It is unfortunate that the Applicant's brief uses rhetoric to attack a condition that, in fact, is reasonable in order to mitigate a potential impact. Using language such as "untested, unreliable and unnecessary" (Applicant's Post-Hearing Brief (hereafter "Brief") pg. 13) and "Staff's eagerness for MLPP to serve as a guinea pig for these soot filters"(Brief, pg.15) serves only to inject a sense of sensationalism when the issue is simple and clear.

Staff's analysis found an offsite PM10 impact which Staff believes must be mitigated (6/15 RT 40, lines 11-25, 41 line 1-9). Clearly, the record in this case indicates that the oxidizing soot filters had been tried only at Avila Beach (6/15 RT 11). However, Applicant's witness stated "On one of those pieces of equipment, the soot filter was found to be problematic....On the other three, it appeared to operate satisfactorily." (6/16 RT 11)

Staff is not "eager" to have Moss serve as a "guinea pig." Staff is carrying out its CEQA duty to mitigate the project's contribution to a significant cumulative impact. To imply that the size of this impact is relatively small compared to other cases licensed by this Commission and is therefore unworthy of being mitigated misses the point. To imply that this impact does not need to be mitigated because of its small size violates CEQA caselaw (see Kings County Farm Bureau v. City of Hanford, 221

Cal.App.3d 692, 270 Cal.Rptr.650 (1990)). Again, Staff does not consider the MLPP as a “test” case, but rather a situation that requires the use of all feasible mitigation to avoid or substantially reduce all significant adverse environmental impacts caused by the project. Although the information is not in the record, it now appears that oxidizing soot filters have been tried elsewhere with success.

Notwithstanding that, condition AQ-54 has been written to allow for discretionary application of the technology. The discretion takes into account the record of Avila Beach, i.e. a three of four success rate. The condition allows MLPP to have a California Licensed Mechanical Engineer or Qualified Environmental Specialist determine whether oxidizing soot filters are suitable for which pieces of construction equipment. The condition even allows an oxidizing soot filter to be removed if, after installation, it appears to be unsuitable for the equipment. Therefore, there should be no issue about the oxidizing soot filters affecting equipment reliability or damaging the equipment. It is unfortunate that MLPP views a condition that allows for flexibility in the use of a technology as a “science project” (Brief, pg. 15). Staff vigorously disagrees with that characterization.

In Applicant’s Brief, page 15, footnote 4, Applicant states that Staff admits that the \$10,000 apiece cost of the filters “may prove prohibitive for many projects. (6/15 RT 46-47).” Staff indeed stated that the cost was \$10,000 per filter, but a review of Staff’s copy of the cited transcript page does not reveal a Staff conclusion that the cost may be prohibitive. In fact, Staff’s witness states that the filters may be taken off and reused at the next project site (6/15 RT 47 lines 1-6).

In conclusion, Staff has determined that there is a potential significant adverse environmental impact. The use of oxidizing soot filters has been proposed in other projects besides this one. This is not an experiment, science project or irrelevant and extravagant proposal by Staff. This is intended to mitigate the impact, but allows for the non-use or discontinued use of the oxidizing soot filters if circumstances warrant. Staff recommends that the Committee retain condition AQ-54.

Biological Resources: Staff has no comment on Applicant's Brief, but Staff will comment on the Coastal Commission's report and letters from the public *infra*.

Land Use: Staff agrees with the language provided by Applicant with one addition. At the evidentiary hearing, Applicant also agreed to modify the first paragraph in the Verification for Condition Land-2 by changing the first line to read "Within **60** days after start of construction..." instead of 90 days (6/15 RT 70, lines 5-8).

Transportation: Staff has two comments about Applicant's Brief. On page 38, regarding the Protocol for Condition Trans-6, Applicant suggests deleting the California Coastal Commission and Monterey County for consultation about encroachment permits. Staff does not object to that change and also suggests the deletion of "in coordination with Caltrans" because Caltrans issues permits rather than coordinates. However, Staff believes that Monterey County wanted to receive and comment on the Traffic Management Plan, as earlier versions of the Traffic

Management Plan addressed non-State facilities.

On the same page, the first bullet contains a proposed finding. Staff believes that it is not technically accurate. Staff proposes the following finding instead: "The additional amounts of traffic attributable to project construction and operation will not significantly degrade the performance of the region's roads".

As stated above, Staff has no comments about Applicant's comments in Biological Resources. Staff now addresses the comments of the public and the Coastal Commission.

Responses to the Environmental Organization' letter dated July 17, 2000.

Staff recognizes that there is some wording confusion between the FSA and the Errata. Staff and the parties have addressed most of the issues raised in this letter at the evidentiary hearing on June 20, 2000 and at the July 17, 2000 Committee Conference in Moss Landing. Several points are clarified below.

The first point is that Staff does not believe that thermal or impingement effects will be significant. Energy Commission's and Regional Water Quality Control Board's (RWQCB) biology staffs and their consultants share this belief. All of these experts believe, however, that entrainment will result in significant effects.

Since the Elkhorn Slough currently supports a vibrant ecosystem after 50 years of power plant operation, and considering the other sources of degradation to the greater Elkhorn Slough ecosystem, the operation of the new Units 1 and 2 are not expected to result in a devastating loss to the Elkhorn Slough as we know it.

However, the effects are considered significant and require mitigation. Staff believes that seven million dollars is adequate to implement enhancement and restoration projects for that purpose.

The letter states in “Section II. The Final Staff Assessment is Inadequate” that Staff did not analyze the secondary or indirect effects up the food chain (i.e., sea otter).

The Moss Landing power plant has been operating for decades (Units 1-5 shut down in 1995). It is clear that the loss of primary productivity will cause effects up the food chain but measuring the primary productivity losses is almost impossible. Attempting to move to higher trophic levels would be impossible, and would result in the waste of millions of dollars. Staff considers mitigation that addresses the Elkhorn Slough at the ecosystem level to be the best mitigation approach. Loss of productivity can be replaced with a combination of enhancements to the slough.

The letter comments that the FSA has changes and inconsistencies from the Errata. An example cited is a statement in the FSA that thermal discharge, impingement and entrainment are significant. The Errata, however, correctly concludes that only entrainment effects are considered significant; the prior statement in the FSA is incorrect. As support for this explanation, the reader need only continue to read the same paragraph in the FSA (FSA Part Three, page 30) to see that Staff believes, “The thermal discharge by itself is not considered to be a significant impact at this time.” The Errata accurately reflects the analysis by Staff. Staff considers the thermal and impingement effects insignificant.

Cumulative Impacts

The commenters are correct that the description of cumulative impacts is confusing in the FSA/Errata. The proper statement is that cumulative effects of Units 6 and 7 and of the new Units 1 and 2 would be significant. The operation of Units 6 and 7 continuously reduce the primary productivity of the Elkhorn Slough ecosystem and has for decades. However, Staff believes that the cumulative impacts cannot be avoided, and have been or will be reduced to the most feasible levels. The project's impacts will be mitigated fully such that the project's contribution to the cumulative impacts will be less than significant. Staff believes that the 7 million-dollar mitigation/conservation package mitigates for **direct, indirect and cumulative impacts** and mitigates them at the ecosystem level.

The comments regarding "Section III. Alternatives" state that project alternatives must be analyzed that can avoid or reduce significant impacts. The alternatives analysis can be found in the Water Resources section. The Regional Water Quality Control Board and Energy Commission Staff believe that, with the modification to the old Units 1-5 cooling water system, Best Technology Available is being used. Dry cooling and cooling towers would result in no aquatic and less aquatic resources effects, respectively. However, the costs involved in using those technologies at this site are prohibitive, and in the case of salt water cooling towers, there are other issues. Staff believes that other technology alternatives are not feasible and that the mitigation package as agreed to by Applicant, Staff and the RWQCB will satisfactorily mitigate impacts.

With respect to comments in “Section IV. The Compensation Proposal”, there are philosophical differences in how the environmental organizations believe mitigation should be done and the approach the RWQCB and Energy Commission staffs find acceptable. The main difference is over the issue of measuring increased productivity of the Elkhorn Slough ecosystem and determining whether the “estimated” losses from the project are replaced by this mitigation proposal. The biologists of the RWQCB and Energy Commission believe it is unrealistic to carry out those measurements and make such a determination using a reasonable amount of money.

There is also continued confusion about the 390 acres of wetland used to derive a mitigation fund amount. There will be **no** Elkhorn Slough wetland acres lost due to this project. Therefore, **no** specific amount of replacement acreage has been identified. It should be noted that Mark Silberstein, Executive Director of the Elkhorn Slough Foundation, explained at the Committee Conference on July 17th that 390 acres of wetlands could not be created in the Elkhorn Slough, but wetlands could be purchased, enhanced and managed in perpetuity, in addition to many other enhancements. He also stated that eliminating situations that degrade the slough (e.g. sedimentation problems) would lead to an improved Elkhorn Slough over time.

Staff believes strongly that adding details to the Elkhorn Slough Foundation’s Watershed Conservation Plan (August 1999), and identifying other valuable efforts that enhance and improve the Elkhorn Slough environment will mitigate the project effects adequately. That Plan has been docketed with the Energy Commission. The

measures identified in the Plan are a good starting point for the types of measures that will be carried out. Examples of the types of possible mitigation include: purchasing remaining unprotected marsh parcels, providing suitable buffers between cultivated fields and wetlands, restoring areas suitable for habitat restoration, providing on-going farm assistance and outreach to ensure 50-percent reduction in sedimentation into Elkhorn Slough, and identifying and implementing actions and policies that increase freshwater marsh.

Putting in too many details at this point may reduce the overall effectiveness and benefit derived from the multi-agency planning effort and stifle helpful future input from agencies and other groups. Staff considers the mitigation/compensation plan that is required by the Condition of Certification BIO-7 to be critical and one that will require much information and many decisions in order to end with a satisfactory and approved plan. Staff recommends strongly that the Elkhorn Slough Foundation administer the mitigation funds on an approved plan/project basis (it may receive the funds from an escrow account such as one that the RWQCB will require).

With respect to Condition BIO-7: Comments on Mitigation/Compensation Plan Condition, Staff believes the general ideas/safeguards/wording expressed by the environmental groups for use of the mitigation/compensation funds are helpful. Staff believes that the Coastal Commission's proposed modifications to the Conditions of Certifications dated July 24, 2000, are acceptable.

The concept that the replacement of primary productivity in the slough can be measured and that improvement can be credited to specific mitigation measures

seems rational but is not realistic. Other types of performance standards and measures of success and achievement, such as certain numbers of acres purchased, or revegetated, or protected by conservation easements, will be included as measures of performance and success. Attempting to measure anything more is biologically unrealistic and infeasible.

In conclusion, there are no wetlands lost as a result of this project (Units 1 & 2). There will be a loss of primary productivity of the ecosystems in Elkhorn Slough, and Staff recommends a condition of certification that requires mitigation of those losses by improving and enhancing the Elkhorn Slough ecosystem. Staff believes the notion that only wetland creation is appropriate mitigation is shortsighted, unrealistic, and probably infeasible in Elkhorn Slough. Staff believes that wetland protection and enhancement, and other measures that reduce degradation and/or enhance the quality of the Elkhorn Slough environment, will result in improvement of productivity in perpetuity. These general measures along with an endowment of two million dollars will provide for monitoring of success and effectiveness, the need for future maintenance, management, planning, research, operation and other measures required to ensure long-term and short-term success of mitigation.

With respect to the comments of Helping Our Peninsula's Environment, or HOPE, Staff believes there is a misunderstanding about the Energy Commission's process. This process is a certified regulatory program, exempt from the requirements of an environmental impact report, pursuant to Public Resources Code section 21080.5, and Title 14, California Code of Regulations section 15251(k).

Responses to public comments typically are included in Staff's documents, the Preliminary Staff Assessment and the Final Staff Assessment. After the Committee issues the Presiding Members Proposed Decision, the Committee typically responds to public comment in the Revised Presiding Member's Proposed Decision. Finally, public comment is accepted at the Commission's Business Meeting at which the Final Decision is discussed.

The Commission's process is not equivalent to a Negative Declaration, nor is there any Categorical Exemption being issued. This matter has been before the public for almost one year, with numerous public workshops having been held in Moss Landing. Certainly, no public notification process is perfect and it is regrettable that some public groups have not been made aware of this project until recently. However, in the absence of new issues being raised, Staff believes its analysis is complete and thorough.

DATED: July 24, 2000

Respectfully submitted,

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